IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.255 Of 2000.

Date of decision: July 26th, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Rakesh Kumar and another. ..... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondents: Mr. Rakesh Raghuwanshi, Advocate, for respondent No.1.

None for respondent No.2.

Surinder Singh, J (oral):

The respondents were acquitted by the trial court in case No. 61/2 of 97, vide a detailed judgment, passed on 29.4.1998 under Section 379 read with Section 34 of the Indian Penal Code, allegedly committing a theft of the Maruti Car bearing No.HP-03-0519 owned by Govind Ram Chauhan (PW1), from the National Highway, Khalini, Shimla where it was parked near his house, "Marry Lodge", on 28.2.1997.

Said Shri Govind Ram Chauhan had reported the matter to the police in writing, vide report Ext.PW1/A. In the second week of June, 1997, he was informed by the police that the said vehicle traced and was parked in the police Station,

---

Whether reporters of local Papers may be allowed to see the judgment? Yes.

Panchkula (Haryana). He alongwith ASI and a constable from Police Station Chhota Shimla went there and complainant identified the same to be his own, got its possession, which was again seized by the police and brought to the Chhota Shimla and later he got it released from the court.

As a matter of fact, the respondents were already arrested by Haryana police in another theft case in FIR No.452/1997 dated 1.5.1997 wherein, a statement mark `X' was made by respondent Rajesh Kumar having stolen this car from Shimla, which he parked it near Showroom No.41, Swastik Vihar, Panchkula, with the intention to sell it. This document has not been proved in accordance with law and the recovery memo of the Car mark `Y' was also not proved. In fact the perusal of mark `Y' shows that three Scooters and one Maruti Car in question were taken into possession under Section 102 of the Code of Criminal Procedure in FIR No.452 aforesaid by Haryana police on 11.6.1997. The said vehicles were seized being suspected to have been stolen, but there is nothing on record to show that the seizure was reported to the Magistrate concerned, as per Section 102 of the Code of Criminal Procedure and it has not been proved that Panchkula police was authorised to retain the Car in question with them under the valid orders. In order to prove this case, there is only pointing out evidence of the respondent- accused in the form of confession recorded in Memos Exts.PW1/C and D under Section 27 of the Evidence Act. Further the memos Exts.PW1/E, PW2/A, PW7/A and PW11/B, pointing out the place of parking and throwing out the number plate is not a legal evidence as

it is hit by Section 162 of the Code of Criminal Procedure. There is no direct or substantial evidence regarding committing of theft of the Car in question by the respondents. The learned trial Court has considered the entire facts in detail and on the basis of the contradictions and also the fact that the police already was in view of the car having been parked in police station Panchkula, the value of the disclosure statement had lost its importance, thus the recovery has become meaningless, otherwise also the purpose of recovery under Section 27 of the Indian Evidence Act in the given circumstances, the case of the prosecution stands not proved. The contention of the State in appeal that the trial Court had wrongly disbelieved the disclosure statement and other evidence on record on the wrong facts is worth rejecting. I have found that the conclusion arrived at by the trial court is perfect and no perversity is found therein. Accordingly, the appeal is dismissed and the judgment of acquittal is upheld.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 26th, 2007. **(Surinder Singh)**
(PDS) **Judge**.